

# **North Smithfield Zoning Board of Review**

## **Meeting Minutes of February 6, 2007**

**The North Smithfield Zoning Board of Review met on Tuesday, February 6, 2007, at 7:00 PM at Kendall Dean School, 83 Greene Street, Slatersville, Rhode Island.**

**Call to Order: The Chair called the meeting to order at 7:00 pm.**

**I. Call of the Roll: Chair Stephen Kearns called the roll of the members. Present: William Juhr, Stephen Kearns, Vincent Marcantonio, Guy Denizard, Steven Scarpelli, Dean Naylor, and Mario DiNunzio. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.**

**The Chair reviewed procedures of the board for all present.**

### **II. Approval of Minutes – January 2, 2007**

**Mr. Juhr made a motion to approve the minutes of the January 2, 2007 meeting. Mr. Marcantonio seconded the motion, with all in favor. The Board decided to hold off on approving the decision of January 2, 2007 for a Special Use Permit for New England Self Storage, pending verification of the DEM permit that storage of gasoline on the site is allowed.**

**III. Continued application of Rita A. Turcotte, requesting a dimensional variance from section 5.5, subsection 5.51. Locus is Rue de St. Jude, Plat 17, Lot 184.**

**Rita Turcotte was sworn in by the court stenographer. Ms. Turcotte distributed copies of plans (exhibit P2—Revised Plans of Administrative Subdivision), which she informed the Board are identical drawings as P1, except for the designation of the septic system on Plat 17, Lot 183, and the designation of the well on Lot 184, which lies directly in front of the building.**

**Mr. Marcantonio stated that the plans are not dimensional, and therefore do not show the distance between the well and septic system. He indicated that he did not want to create unusable lots, so he wanted to have exact measurements to insure that there are 100 feet between the well and the septic system.**

**Philip Godfrin was sworn in by the court stenographer. He stated that, using approximate measurements, the distance between the existing cesspool on Lot 183 and the proposed well on Lot 184 is well over 100 feet. The Chair told Mr. Godfrin that to grant the variance that does not fit DEM criteria, they would be creating a problematic condition on the other lot. Mr. Godfrin responded that what happens on Lot 183 should not impact this application. If there was a failure of the septic system on Lot 183, the owner of that property would need to deal with DEM to remedy the situation. The Chair also stated that**

since the subdivision has been recorded, Lot 183 is now separated from the applicant's lot and the variance requested does not include Lot 183. For the purposes of this application, only the variance should be addressed, not the subdivision of the land.

Mr. Juhr stated that he wants to be sure there are 100 feet between the new septic system and the old system, and that there are 100 feet between the septic systems and the wells. The Chair stated that making a condition that the lot line can be moved would not be possible. He asked Mr. Rossi for his opinion. Mr. Rossi stated that to make the applicant move the lot line would be resubdividing the land, which is not in the jurisdiction of the Zoning Board, therefore the Board is not authorized to change the lot line.

Mr. Godfrin gave the Board a copy of the most recent field card for the property (exhibit P3), which he pointed out shows the transfer of Plat 17, Lots 184 and 185, and stated that it has been some time since Lot 183 has been under the same ownership as Lots 184 and 185. Mr. Godfrin stated that Lot 184 has to meet DEM requirements, and it will.

Mr. Marcantonio maintained that he would suggest moving the property line. Mr. Juhr stated that the minimum square footage for the lot is 40,000 square feet, so the applicant is seeking approximately 50% relief under the variance.

**Ms. Turcotte stated that the application meets the Rhode Island legislation guidelines for approval of a dimensional variance in that the request is due to the unique characteristics of the land, not for financial gain, there will be no alteration of the land, and the proposed home will be similar in size and dimension to other homes in the area.**

**This lot is a recorded lot, and without the granting of the variance, there is no other use for the lot. It is in a RS-40 zone; therefore the use must be residential. The variance is being sought because it is more than a mere inconvenience; the lot will become useless to the owner if the variance is not granted. Ms. Turcotte requested that the Board grant the variance.**

**Mr. Jühr asked Ms. Turcotte what the unique characteristics of the land are. Ms. Turcotte informed the Board that the property abuts the 100-year easement of Narragansett Electric, so she can't move any further in that direction. Mr. Marcantonio asked if they can stipulate that the lot line be moved, since he feels it was subdivided incorrectly. Mr. Rossi stated that since the subdivision has been granted, the Board must only address the requested dimensional variance. If the applicant has met the specific requirements for granting a dimensional variance, the Board should rule in favor, if the Board feels that the applicant has not met these specific requirements, they should rule against granting the variance, but this hearing should be limited to that, not the subdivision of the land.**

**The Chair called a recess at 7:45 pm. The meeting was called back to**

order at 7:49 pm.

The Chair made a motion to table the decision until next meeting. He stated that some issues have been raised and he would rather have the Board err on the side of caution than make a quick decision. Mr. Juhr seconded the motion, with all in favor. Ms. Turcotte asked what questions remained because she would like the chance to rebut. Mr. Juhr stated that the main issue is that there are no dimensions on the plans. Mr. Marcantonio stated that he did not need exact measurements from the applicant, because he has a pretty good idea of the distance between the cesspool and the well from the plans presented. Mr. Rossi stated that the evidence has been presented and the Board should render their decision on February 20, 2007. Mr. Rossi stated that no further evidence should be considered. The Chair informed Ms. Turcotte that no additional evidence was required of her, and that the Board would meet on February 20 to render its decision on the application.

IV. Application of Michael Prudhomme, requesting to open and operate an automotive light repair garage, which will require a special use permit, per section 5.4.7, subsection 7-A. Locus is 473 St. Paul Street, Plat 2, Lot 64.

Mr. Rossi informed the Board that he had spoken with Lloyd Gariepy, attorney for the applicant, about issues pertaining to the property being located on a water recharge area. The application is deficient

in a number of respects and would need to comply with section 6.19.7 of the ordinance. At this time the applicant would like to be passed off the agenda and the application continued to February 20, 2007. Mr. Marcantonio made a motion to continue the application until February 20. Mr. Denizard seconded the motion, with all in favor.

V. Continued application of Jeffrey Piette appealing the North Smithfield Planning Board's decision of July 20, 2006, which was recorded on October 6, 2006, and requesting a dimensional variance from Section 5.5.1 "Building Setbacks" from Section 6.2 "Street Access to Buildings" of the North Smithfield Zoning Ordinance. Locus is Annette Avenue, Plat 9 Lot 191.

Michael Kelly, attorney for the applicant, addressed the Board, reviewing the applicant's requests. The applicant is appealing the Planning Board's decision of July 2006, which denied the applicant's request for extension of the paved road on Annette Avenue. Though no written decision was made, the minutes of the meeting were rendered as the decision. However, Mr. Kelly stated that the Planning Board does not have the authority to deny the request, and Mr. Kelly further stated that the applicant should never have gone to the Planning Board with his request. The applicant is also seeking a variance for side yard setbacks. The final variance being sought is that of street frontage. In lieu of extending the paved street, the applicant is seeking to add a 15-ft. wide gravel driveway as access to the lot. Mr. Kelly stated that without the variances, the lot would be

**unbuildable.**

**The following witnesses were sworn in by the court stenographer and provided testimony for the applicant: Erin Gallogly, an associate at Marc N. Nyberg Associates; Brandon Faneuf, a professional wetlands scientist from Ecosystem Solutions, Inc.; and Jeffrey Piette, owner/applicant.**

**The applicant entered the following exhibits:**

- P1) Revised plan dated 1/29/07, which indicates reduced setback variance request**
- P2) Record of the application and attachments**
- P3) Aerial photograph of site locus**
- P4) Elevation certification, prepared by Marc N. Nyberg Associates**
- P5) Drainage report and hydraulic calculations**
- P6) Letter from North Smithfield Department of Public Works**
- P7) Resume of Brandon Faneuf**
- P8) Report by Brandon Faneuf, dated January 17, 2006, submitted to DEM in regard to this property**
- P9) FEMA map**
- P10) Letter from the Building Inspector, stating that the property is an approved lot**
- P11) Letter from Rhode Island Department of Environmental Management**

**Through questioning by Mr. Kelly, Ms. Gallogly testified that she**

prepared plans under the supervision of Marc Nyberg. According to these plans, no part of the applicant's lot is located in the flood plain or flood zone. She also testified that the lot is located 4 ft. over the elevation of the wetlands. The lowest elevation on the site is 333.5 ft. She pointed out that her plans show an approximate location of Zone X, but that the plans prepared by Ecosystem Solutions show that the location of Zone X shows that it is outside of this lot. Ms. Gallogly testified that the proposed construction of a 15-ft. gravel driveway, as opposed to a 30-ft. paved road would significantly reduce runoff and the effect to wetlands. Mr. Kelly added that Mr. Piette is prepared to construct a paved road, but in response to the Planning Board's concerns about the wetlands, they are proposing this gravel driveway as a better alternative. Mr. Kelly also distributed copies of P6, a letter from Raymond Pendergast from the Department of Public Works, which states that the town has no preference between paved or gravel road.

Mr. Faneuf testified that he is a professional wetlands scientist from Ecosystem Solutions, Inc. His business is to assist clients with land development, specifically with biological issues and DEM regulations.

Mr. Faneuf stated that no part of the lot is located within the flood plain or flood zone. He made this determination using a combination of methods, including RIGS data, FEMA maps, flood insurance rates, site visits, and the ArcView program. He also used an aerial photo with an overlay of FEMA data on the photo to provide more accurate information. Mr. Faneuf stated that the report he submitted to DEM



**(P8) states that the swamp is off the property, but part of the 50-ft. wetlands buffer is located on the applicant's lot.**

**Mr. Faneuf stated that he collaborated with Marc Nyberg in placing the flags on the plan, and physically placed flags to delineate the swamp at the site on October 24, 2005. Mr. Faneuf assisted Mr. Nyberg in locating the house furthest from the wetlands. Mr. Faneuf anticipates that DEM would approve these plans, however the problem that the applicant is having is that the DEM cannot approve any house lot that does not have access. The town will not give permission to build the road without DEM approval. Mr. Faneuf stated that the DEM mandates to avoid impacts from runoff, and if it's not possible to avoid them, then they must minimize the impacts. Mr. Faneuf stated that the 15-ft. gravel driveway in lieu of a paved road will minimize the impacts to the wetlands. A narrower, pervious road will result in less runoff. He stated that the proposed house is in the area of the lot that will have the least impact on the offsite wetlands. He stated that he has been to the site, and while it is currently frozen, when he was there in October 2005, there was no running water. He also stated that the FEMA maps used (P9) are a constant work in progress and are always subject to change. He testified that the DEM would have to approve building within the 50-ft. buffer. If the DEM does not approve the encroachment, the lot would not be usable.**

**Again Mr. Faneuf informed the Board that the lot needs access for DEM approval, but Mr. Piette needs permission to improve the access**

(platted road, but not an improved road). Mr. Kelly stated that it is within the Zoning Board's jurisdiction to grant a variance to the ordinance that states each lot must have access on an improved road; the Planning Board is not able to grant relief. Mr. Kelly stated that he has researched this issue in the past, and one who owns a lot has absolute right to use a platted street for access. The Department of Public Works usually determines how the road is built. The Planning Board does not have jurisdiction because it is not a new street, therefore the variance they are seeking is that the road must be an improved public street.

The Chair expressed concerns that the proposed gravel driveway may not be accessible by emergency vehicles. He would like details on the proposed construction, including the compaction of the gravel, as well as comment from the Fire Department on accessibility for their emergency vehicles.

Both Ms. Gallogly and Mr. Faneuf testified that the flood zone has an elevation of 229 ft. and the lowest elevation on the applicant's lot is 233.5 ft. The DEM requires grading so that surface water flows toward the wetlands.

Mr. Jühr stated that in an RU-20 zone, the minimum lot size is 20,000 sq. ft., and this lot is 75 % smaller than that minimum. Mr. Kelly responded that the lot is already a lot of record; therefore no variances are needed on the lot size. He referred to exhibit P10, a

letter from the Building Inspector stating this property is an approved lot, but there is no possibility of building on it because of the setback requirements.

Mr. Marcantonio entered exhibit T1, a 1996 letter from the DEM to a former owner (Rosati) of the property. The letter denies a freshwater permit on the property. Mr. Juhr asked Mr. Piette if he had been informed of this when he bought the property. Mr. Piette stated that he did not buy it from Mr. Rosati, so he did not receive this information. Mr. Juhr asked him if he knew of the state of the lot in 1996. Mr. Piette stated that he did not. In response to Mr. Juhr's further questions regarding Mr. Piette's purchase of the lot, Mr. Piette stated that he had purchased the lot approximately 2 years ago for approximately \$15,000, but he is not sure of the exact purchase price.

Mr. Kelly stated that what happened in 1996 is immaterial to this application. He stated that if DEM denies their plan, they will deal with DEM at a later time.

Mr. Marcantonio referred to the status of the application, as he found through a search of DEM's website. According to this information, the application was to alter wetlands. Mr. Faneuf stated that was a clerical error, it should have been a request for preliminary determination, not to alter the wetlands. Mr. Faneuf stated he would clear up that error.

The Chair stated that he would like the applicant to provide the

**following information: 1) construction details on the road, 2) determination from the fire department that there is adequate turnaround, and 3) statement of approval on the proposed construction from the Department of Public Works.**

**The Chair asked if there were any members of the audience who wished to speak in favor of the application; there were none. He then asked if any members of the audience wished to speak against the application. The following audience members, all abutters to the property, were sworn in: Daniel Aubuchon, Paul Brodeur, and Pauline Hauck.**

**Mr. Aubuchon addressed the Board and distributed a packet of information (exhibit A1), that he received through town offices. The information included applications from previous owners for variances, and other information such as the copies of the deed to the property. He also distributed pictures of the surrounding lot (A2), which show the wetland delineation flags. Mr. Aubuchon stated that most of the property is within the wetland perimeter. He pointed out on A2 that the 50-ft. buffer is highlighted in pink. He stated that more than 50% of the house and part of the driveway would be within the buffer. He also stated that water flows more than 6 months of the year, therefore, the buffer extends to 100 feet. Mr. Aubuchon stated that the wetlands in this area have been identified by the town as some of the most valuable wetlands in the town. Mr. Aubuchon pointed out that attachment 3 in exhibit A1 is a document that shows**

that Mr. Piette bought the land for \$500. He stated that Mr. Piette is a contractor, and if the variance is granted, Mr. Piette may be able to make a great financial gain. Mr. Aubuchon stated that the rest of the homes in the neighborhood are located away from the wetlands. He referred again to A1 and stated that in two previous applications to alter the road, the town had objections (Town Council and Planning Board).

Mr. Brodeur stated that he has lived near this property for 50 years. He stated that there is a brook that runs through this property from Park Square to Cherry Brook and that water is constantly flowing and flooding during storms.

Ms. Hauck stated that she lives at 17 Lamoureux Boulevard. She bought the house in July 2005. She stated that the brook gets very high and her property is very wet. During storms, the applicant's lot gets very wet and the water is very high on both that lot and her property. She also stated her objection to another residence being built 10 feet behind her house because it would lower the value of her home. She said she would put her property up for sale if the applicant's requests are granted.

Mr. Kelly responded to those speaking against the application. He said that there could be many reasons that the deed reflects a different purchase price. He also stated that exhibit A1 supports that the Planning Board does not have jurisdiction in this matter and that

it supports the gravel driveway as a better alternative with regard to wetlands issues.

Mr. Jühr made a motion for a 2-minute recess at 9:48. Mr. Marcantonio seconded the motion with all in favor. The Chair announced that during the recess Mr. Jühr said he was ready to vote on the request. Mr. Rossi stated that it is his opinion that the Board complete more fact finding and hear more testimony before the vote.

The Chair made a motion to continue the hearing to February 20, 2007. Mr. Kelly stated that he is not available on February 20 and asked if they could continue the hearing until the first meeting in March. The Chair amended his motion to continue the hearing to March 6, 2007. Mr. Denizard seconded the motion. Vote on the motion: AYE: Mr. Kearns, Mr. Marcantonio, Mr. Scarpelli, Mr. Denizard. NO: Mr. Jühr.

## **VI. Zoning Board Issues and Concerns**

The Chair requested that all members of the Board receive a complete copy of the North Smithfield Comprehensive Plan as revised. Mr. Jühr also requested that they receive updated copies of the Zoning Ordinance because there are pages missing in the latest copy they received.

Mr. Kearns made a motion to adjourn at 9:53 p.m., seconded by Mr. Scarpelli, with all in favor.